

AP IFW

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Date: December 20, 2005


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PATENT

Paper No.

File: Kor1-CIP

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor	:	Charles Kormanik, Jr.
Serial No.	:	08/802,472
Filed	:	February 18, 1997
For	:	THEMATIC PACKAGING SYSTEM
Group Art Unit	:	3208
Examiner	:	Luby, M.

Honorable Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL LETTER

SIR:

Please enter the following enclosed document in the above-identified patent application.

1. Supplemental Brief on Appeal on Behalf of Appellant.

APPELLANT CLAIMS SMALL ENTITY STATUS. The Commissioner is hereby authorized to charge any fees associated with the above-identified patent application or credit any overcharges to Deposit Account No. 50-0235. Please direct all correspondence to the undersigned at the address given below.

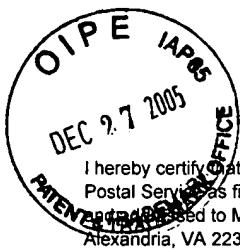
Respectfully submitted,



Peter K. Trzyna
(Reg. No. 32,601)

Date: December 20, 2005

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SUPPLEMENTAL REPLY BRIEF ON APPEAL
ON BEHALF OF APPELLANT

The argument of the Supplemental Answer largely follows the argument of the Answer, and the Board's attention is respectfully drawn to the Appeal Brief and the Reply Brief.

Briefly, though, Applicant's main critique is that the Examiner's Answer is not responsive to Applicant's arguments distinguishing over the cited art. For example, Applicant's Brief and Reply Brief state: "there is no Examiner contention that can consistently be applied to Gossard to meet all the claim requirements collectively." See Appeal Brief p. 14-19; Reply Brief at pp. 3-6. The Examiner has not responded. A reason that the Examiner did not respond is because there is no response: every element of the claimed invention is not identically shown in a Gossard.

Rather than addressing Applicant's argument that "there is no Examiner contention that can consistently be applied to Gossard to meet all the claim requirements collectively," the Examiner's Answer at page 5 appears to argue with a statement of facts about Gossard in the Appeal Brief.

Applicant can generally respond to the Examiner's comments on Gossard by noting that Applicant's statement in the Appeal Brief (at pp. 13-14) is factually correct. And generally, Applicant's claims generally pertain to constructing a package wherein "the shape of the package visually suggestive of" something else. One cannot define the shape without defining what it is visually suggestive of. This is not merely an intended use because the particular structure of the package is defined thereby. Therefore the claim requirements, when considered as a whole and not as snippets, require a manipulative difference in the structure of the package. See, e.g., claim 5 constructing ... the package visually suggestive of...

In the first paragraph of page 6 in the Supplemental Answer, the Examiner appears to argue with the title of the section, rather than its substance. The argument appears to be that ignoring claim limitations is justified by the breadth of the claims. In response, there is no "broad claim" exception to Sec. 102 and the Patent Office cannot ignore claim limitations. The

Examiner has not answered Applicant's argument that "there is no Examiner contention that can consistently be applied to Gossard to meet all the claim requirements collectively" because there is no answer. As a further distinction over the cited 102 art, there is no teaching of the claimed marketing step in Gossard, and there is no proper showing of inherency, as stated in the Reply Brief.

Applicant strongly objects to the Examiner's grouping claims rejected pursuant to Sec. 102 with claims rejected pursuant to Sec. 103 (in the Supplemental Answer at page 6). This is an improper intermingling of statutes, confused further by the Examiner's opinion referenced at page 6 of the Appeal Brief. It is improper to reject Applicant's claims based on the Examiner's loose paraphrasing, pursuant to a melding of statutes.

Pursuant to the quoted Bond decision in the Reply Brief:

"For a prior art reference to anticipate in terms of 35 U.S.C. Sec. 102, every element of the claimed invention must be identically shown in a single reference."

Gossard does not identically show every element of the claimed invention, and thus statutory anticipation has not been shown. This is sufficient for deciding the entire appeal, as the dependent claims build on this point, but for completeness, the attention of the Board is respectfully drawn to the Appeal Brief and the Reply Brief.

Respectfully submitted,



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